

OLL 83-3028
14 December 1983

MEMORANDUM FOR: C/L&PLD/OGC
C/ALD/OGC

STAT FROM:

Legislation Division, OLL

SUBJECT: H.R. 4119, Congressional Review of
Agency Regulations

1. Attached for your review and comment is H.R. 4119, a bill to establish a uniform procedure for Congressional review of federal agency regulations. Basically, this bill sets up a 90-day report and wait procedure that is triggered by the publication of the rule in the Federal Register. During this 90-day period, Congress can act by joint resolution to disapprove the rule. Absent passage of a disapproval resolution, the regulation or rule automatically takes effect at the end of the 90-day period.

2. My concern with this bill stems from the fact that the definition of "rule" in section 2(b) does not exclude rules relating to military/foreign affairs or procurement. Although it may contain functionally equivalent exceptions, this definition of "rule" apparently would require the publication of rules involving military/foreign affairs or procurement in the Federal Register to enable the rules to become effective after the 90-day waiting period.

3. Although there is no action presently scheduled for H.R. 4119, I would appreciate your views on the potential impact of this bill.

STAT Attachment

STAT cc: LD/OLL

DISTRIBUTION:

- 1 - Each Addressee
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ROD:csh (15 December 1983)

21 OCT 1983

ILLEGIB

98TH CONGRESS
1ST SESSION

H. R. 4119

To establish a uniform procedure for congressional review of agency regulations
and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1983

Mr. KRAMER introduced the following bill; which was referred jointly to the
Committees on the Judiciary and Rules

A BILL

To establish a uniform procedure for congressional review of
agency regulations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That this Act may be cited as the "Congressional Regulatory
4 Review Procedure Act".

5 SEC. 2. (a) Section 553(d) of title 5, United States
6 Code, is amended by striking out "The" and inserting in lieu
7 thereof the following: "Subject to section 553a. of this title
8 the".

1 (b) Title 5 of the United States Code is amended by
2 inserting immediately after section 553 the following new
3 section:

4 **“§ 553a. Congressional review of agency rulemaking**

5 “(a)(1) The definitions set forth in section 551 of this
6 title shall apply to this section except that—

7 “(A) those functions excluded from the definition
8 of the term ‘agency’ by paragraph (1)(H) of such sec-
9 tion are included in such definition for purposes of this
10 chapter;

11 “(B) the term ‘rule’ shall not include—

12 “(i) a rule of agency organization, practice,
13 and procedure,

14 “(ii) a rule relating to agency management
15 and personnel,

16 “(iii) a substantive rule which grants or rec-
17 ognizes an exemption or relieves a restriction, or

18 “(iv) a rule adopted without public notice
19 and comment pursuant to a valid agency finding
20 that such notice and comment were unnecessary
21 due to the routine nature or insignificant impact
22 of the rule.

23 “(2) For purposes of this section the term ‘promulga-
24 tion’ means filing with the Office of the Federal Register for
25 publication.

1 “(b)(1)(A) Except as provided in subparagraph (B), no
2 rule of any agency shall become effective prior to 90 days of
3 continuous session of the Congress subsequent to publication
4 in the Federal Register and submission to the House of Rep-
5 resentatives and the Senate.

6 “(B) Where an agency finds and publishes with the rule
7 in the Federal Register that eminent loss of life or property
8 or public threat requires expeditious implementation of the
9 rule, and such rule is submitted to both Houses of Congress
10 simultaneously with its promulgation for review in accord-
11 ance with this section, such rule shall be considered tempo-
12 rarily effective for a period not to exceed 90 calendar days of
13 continuous session of Congress.

14 “(C) If a deauthorization resolution is not enacted in
15 accordance with paragraph (2) of this subsection with respect
16 to a rule under subparagraph (B) of this paragraph, such rule
17 may continue in effect.

18 “(2) Simultaneously with promulgation or repromulga-
19 tion of any rule, the promulgating agency shall transmit a
20 copy thereof to the Secretary of the Senate and the Clerk of
21 the House of Representatives. A rule shall not be effective if
22 a deauthorization resolution is adopted by the Congress
23 within 90 calendar days of continuous session of Congress
24 after the date of promulgation, and the deauthorization reso-
25 lution—

1 “(A) is signed by the President; or

2 “(B) if vetoed by the President, is passed over
3 such veto.

“(3) For purposes of this paragraph the term ‘deauthorization resolution’ means a joint resolution, the matter after the resolving clause of which is as follows: ‘That Congress hereby withdraws the authority of _____ to issue or reissue the rule dealing with the matter of _____ , which rule was transmitted to Congress on _____ .’, the first blank being filled with the name of the agency issuing the rule, the second blank being filled with the title of the rule and such further description as may be necessary to identify it, and the third being filled with the date of transmittal of the rule to Congress.

15 “(4)(A) An agency may not promulgate a new rule iden-
16 tical to one for which authority to issue or reissue has been
17 withdrawn pursuant to this section unless expressly author-
18 ized by law.

19 “(B) If an agency proposes a new rule dealing with the
20 same subject matter as a rule for which authority to issue or
21 reissue has been withdrawn, the agency shall comply with
22 the procedures required for the issuance of a new rule.

23 “(c) If a deauthorization resolution of Congress has been
24 enacted concerning a rule which was being promulgated sub-
25 ject to a statutory time limit for rule making, the enactment

1 of the resolution shall not relieve the agency of its responsi-
2 bility for promulgating a rule, but any statutory time limit
3 shall begin to apply to a renewed rulemaking only from the
4 date on which the resolution is enacted.

5 “(d) For the purposes of this section—

6 “(1) continuity of session is broken only by an ad-
7 journment sine die; and

8 “(2) the days on which either House is not in ses-
9 sion because of an adjournment of more than 3 days to
10 a day certain are excluded in the computation of calen-
11 dar days of continuous session.

12 “(e)(1) The provisions of this section are enacted by
13 Congress—

14 “(A) as an exercise of the rule making power of
15 the Senate and the House of Representatives, respec-
16 tively, and as such they are deemed a part of the rules
17 of each House, respectively, but applicable only with
18 respect to the procedure to be followed in that House
19 in the case of resolutions described by subsection (b) of
20 this section; and they supersede other rules only to the
21 extent that they are inconsistent therewith; and

22 “(B) with full recognition of the constitutional
23 right of either House to change the rules (so far as re-
24 lating to the procedure of that House) at any time, in

1 the same manner and to the same extent as in the case
2 of any other rule of that House.

3 “(2)(A) Rules transmitted to the Congress in accordance
4 with subsection (b) shall be immediately referred by the pre-
5 siding officer of the Senate or of the House of Representa-
6 tives to the standing committee having oversight and legisla-
7 tive responsibility with respect to the promulgating agency in
8 accordance with the rules of the respective House; and such
9 transmitted rules shall not be referred to any other commit-
10 tee. Deauthorization resolutions shall upon introduction be
11 immediately referred by the presiding officer of the Senate or
12 of the House of Representatives to the standing committee
13 having oversight and legislative responsibility with respect to
14 the promulgating agency in accordance with the rules of the
15 respective House; and such resolutions shall not be referred
16 to any other committee.

17 “(B) Each such standing committee shall refer any such
18 transmitted rule or resolution to a single subcommittee desig-
19 nated for the purpose of reviewing rules which fall within the
20 committee’s legislative and oversight jurisdiction.

21 “(C) If a deauthorization resolution is reported by a sub-
22 committee to the standing committee of which it is a part,
23 and the standing committee does not disapprove the subcom-
24 mittee’s report by majority vote, such standing committee
25 shall report such resolution, together with its recommenda-

1 tions, not later than 15 calendar days before the expiration of
2 the 90-day period specified for congressional review in sub-
3 section (b). If such standing committee does not either disap-
4 prove the subcommittee report or report such resolution
5 within the allotted time period, the committee shall be
6 deemed to be discharged from further consideration of the
7 resolution. When a standing committee has reported, or has
8 been deemed to be discharged from further consideration of a
9 deauthorization resolution, such resolution shall be placed on
10 the Resolutions on Regulations Calendar as provided in sub-
11 paragraph (D). The vote on final passage of the resolution
12 shall be taken on or before the 15th day after the bill is
13 reported or the committee is discharged.

14 “(D) There shall be established in the House and in the
15 Senate a calendar, to be known as the Resolutions on Regu-
16 lations Calendar, to which any resolutions on rules reported
17 by committee, or from which a committee is deemed to have
18 been discharged as provided in paragraph (3) of this part,
19 shall be referred. On the second and fourth Tuesday of each
20 month after disposal of such business on the presiding offi-
21 cer’s table as requires reference only, it shall be in order for
22 any Member to call up any resolution which has been for 3
23 calendar days, excluding any day that House is not in ses-
24 sion, on the Resolutions on Regulations Calendar. Debate on

1 deauthorization resolutions shall be divided equally between
2 those favoring and those opposing the resolution.

3 “(f)(1) Congressional inaction on or rejection of a
4 deauthorization resolution of disapproval shall not be deemed
5 an expression of approval of such rule.”.

6 (c) The table of sections for subchapter II of chapter 5
7 of title 5, United States Code, is amended by inserting imme-
8 diately after

“553. Rule making.”

9 the following:

“553a. Congressional review of agency rule making”.

10 (d) The provisions of section 553a of title 5, United
11 States Code, shall supersede any other provisions of law gov-
12 erning procedures for congressional review of agency rules to
13 the extent such other provisions are inconsistent with such
14 section.

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